CF0000060144

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 1376 OF 1998

CRIMINAL APPEAL UNDER SECTION 374 OF CODE OF CRIMINAL PROCEDURE

APPELLANT In Jail. : Mahettar Das aged about 38 years son of Awadh Das, Panika, Resident Village: Donger Tarai, Police Station: Katghora, District:Bilaspur(MP).

- Versus -

RESPONDENT : State of Madhya Pradesh Through: Station House Officer Katghora, Distt. Bilaspur (MP).

9324
Filed on 23.6.98
by Shri Sanjay K. Agrawal
Advocate

Criminal appeal against the judgement of Conviction and sentence passed by court of Special Judge(Attrocity Act) Bilaspur on 27-4-1998 in S.T. No. 245/97 State Vs. Mahettar Das convicting the appellant. R/o. A. R.

OFFENCE - 302 IPC

SENTENCE - RIGOROUS IMPRISONMENT FOR LIFE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1376/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -
Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

28.11.2006

Mr. Abhay Tiwari, Advocate for the appellant.

Mr. Akhil Mishra, P.L. for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of Cr.P.C., the accused/appellant has questioned the legality & validity of the judgment of conviction & order of sentence dated 27th April, 1998 passed by learned Special Judge (Atrocities), Bilaspur in S.T. No.245/97, whereby learned Special Judge after holding the accused/appellant guilty for commission of offence under Section 302 of I.P.C. sentenced him to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that on 23.3.1997 at about 4.00 p.m. in the evening Surajdas (PW-1) lodged the report (Ex.P-1) in the Police Station Katghora to the effect that there was a dispute regarding Kotwari land between his father Tilakdas and previous Kotwar Mehattar. Today in the early morning, his father went to collect *Mahua* flowers at the disputed place. At about 11.00 a.m. he, Village Sarpanch Rankunwar & Secretary Lalman Singh were

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going in connection with a panchayat work, when they reached near Mahua tree, about which there was a dispute between his father and accused, they saw that his father was lying in injured condition. He has serious doubts that previous Kotwar Mehattar has committed murder of his father. Receiving this report, the S.H.O., Police Station Katghora registered the F.I.R. for commission of offence under Section 302 of IPC, left for the place of occurrence and after giving notice to the Panchas prepared the inquest report (Ex.P-2) on the body of Tilakdas. He took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-3, one bamboo lathi under Ex.P-4, clothes of deceased under Ex.P-6, and one tendu lathi under Ex.P-5 from the accused Mehattar. Merg intimation (Ex.P-10) was given by PW-1 Surajdas. Body of Tilakdas was sent for postmortem examination to the Community Health Centre, Katghora under Ex.P-11, where Dr. S.S. Mishra conducted the postmortem, prepared the postmortem report Ex.P-7 and opined that the cause of death was shock as a result of head injury.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Katghora, who in turn committed the case to learned Sessions Judge, Bilaspur from where learned Special Judge (Atrocities), Bilaspur received the case on transfer for trial. The

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prosecution in order to establish the charge against the accused/appellant examined 10 witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Special Judge, after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused, as aforementioned.

We have heard Mr. Abhay Tiwari, Adv. for the accused/appellant and Mr. Akhil Mishra, P.L. for the State.

Learned counsel for the accused/appellant argued that the prosecution has tried to establish the charge against the accused/appellant based on the eyewitnesses namely Sonadas (PW-2), Rajkali (PW-3) Nirmala (PW-4) & Premkunwar (PW-5), whereas, the report was lodged by Surajdas (PW-1), who is son of deceased and not a witness to the incident, as per his version in the FIR, he along with Village Sarpanch Rajkunwar saw the dead body of his father Tilakdas beneath the Mahua tree, but the eyewitnesses to the incident have stated that after witnessing the crime they informed the Sarpanch and Surajdas about the incident and if that is true then why the name of the accused was not mentioned in the FIR that he has committed the murder of his father, which was witnessed by PW-2 to PW-5.

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On the other hand, learned Panel Lawyer for the State supported the judgment of trial court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have perused the evidence and record of the trial court.

PW-1-Surajdas, son of the deceased, lodged the report (Ex.P-1) in which he mentioned that on the fateful day, he along with Village Sarpanch Rajkunwar & Secretary Lalman Singh were going in connection with a panchayat work, when they reached near the Mahua tree they saw that body of his father is lying in a pool of blood. He has serious doubt that Mehattar murdered his father on account of a dispute regarding Kotwari land. Similar is the merg intimation (Ex.P-10) given by this witness. However, PW-2 Sonadas, who is the real brother of deceased, has stated that he witnessed the crime, as he was also collecting the Mahua flowers near the place of occurrence. In para-11, this witness has stated that after returning from the place of occurrence at about 9-10 a.m. he informed about the incident to Surajdas. PW-3 Rajkali & PW-4 Nirmala have also stated that they have witnessed that the accused was assaulting the deceased with a lathi. PW-3 in para-3 of her evidence has stated that after returning to the house, she informed Sarpanch Rajkunwar about the incident. Similar is the evidence of PW-4, who has stated that after returning

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from the place of occurrence, she informed about the incident to Village Sarpanch Rajkunwar, who happened to be her sister, as she is daughter of her elder mother. PW-5 Prem Kunwar has stated in para-18 of her evidence that after the incident she went to house and who informed Surajdas about the incident, she does not know.

Therefore, in view of above evidence of these three eyewitnesses that Surajdas, son of deceased, was informed about the incident at about 9-10 a.m. in the morning, whereas, as per evidence of Surajdas, at about 11.00 a.m. he and Sarpanch & Secretary of Village were going in connection with a panchayat work, when they reached near Mahua tree, they saw that body of his father is lying beneath Mahua tree in a pool of blood. Similarly, other two eyewitnesses to the incident have also stated that after returning from the place of occurrence, they informed the Sarpanch about the incident. Why Surajdas has not mentioned this fact in the FIR that crime was witnessed by Sonadas (PW-2), Rajkali (PW-3) Nirmala (PW-4) & Premkunwar (PW-5) and they informed him and Sarpanch that they the accused was assaulting his father. As such, above contradiction is serious in nature, which creates doubt in the prosecution case, and this fact shows that nobody witnessed the crime when Tilakdas was attacked by the assailant. In fact, had these witnesses witnessed the crime and informed to Surajdas & Sarpanch before the report (Ex.P-

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1) was lodged, then that fact ought to have been mentioned in the FIR. The prosecution has tried to suppress the genesis of crime by adducing all the eyewitnesses, which is contrary to the evidence of PW-1 Surajdas, who lodged the first information report.

In the circumstances, the evidence of eyewitnesses does not inspire confidence of the court for the reasons mentioned above and therefore, the conviction and sentenced imposed on the accused/appellant cannot be sustained.

In the result, the appeal of appellant succeed. Conviction and sentence imposed on the accused/appellant under Section 302 of the IPC are hereby set aside. He is acquitted of the above charges and he be set at liberty forthwith, if not required in any other case.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

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